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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

THOMAS MILTON BELL, R.C.P.
1246 West Palm Avenue
Redlands, CA 92373

Respiratory Care Practitioner License No. 1915

Respondent.

Case No. 1H 2007 590

OAH No.

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 10, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 1915 to THOMAS MILTON BELL, R.C.P. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code states:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 3710 of the Code states in pertinent part:

“The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states:

“The board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to

1 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
2 violate any provision or term of this chapter or of any provision of Division 2
3 (commencing with Section 500).

4 “...”

5 8. Section 3750.5 of the Code states:

6 "In addition to any other grounds specified in this chapter, the board may deny,
7 suspend, or revoke the license of any applicant or license holder who has done any of the
8 following:

9 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
10 physician and surgeon, dentist, or podiatrist administered to himself or herself, or
11 furnished or administered to another, any controlled substances as defined in Division 10
12 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
13 as defined in Article 2 (commencing with section 4015) of Chapter 9 of this code.

14 "(b) Used any controlled substance as defined in Division 10 (commencing with
15 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in
16 Article 2 (commencing with section 4015) of Chapter 9 of this code.

17 “...”

18 “(d) Been convicted of a criminal offense involving the consumption or
19 self-administration of any of the substances described in subdivisions (a) and (b), or the
20 possession of, or falsification of a record pertaining to, the substances described in
21 subdivision (a), in which event the record of the conviction is conclusive evidence
22 thereof.

23 “...”

24 9. Section 3752 of the Code states in pertinent part:

25 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
26 made to a charge of any offense which substantially relates to the qualifications, functions, or
27 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this
28 article. ...”

1 10. California Code of Regulations (CCR), title 16, section 1399.370, states,
2 in pertinent part:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of a
5 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform
6 the functions authorized by his or her license or in a manner inconsistent with the public health,
7 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the
8 following:

9 “ (a) Violating or attempting to violate, directly or indirectly, or assisting
10 or abetting the violation of or conspiring to violate any provision or term of the
11 Act.

12 “...

13 “ (c) Conviction of a crime involving driving under the influence or reckless
14 driving while under the influence.

15 “...”

16 11. Section 492 of the Code states:

17 “Notwithstanding any other provision of law, successful completion of any
18 diversion program under the Penal Code, or successful completion of an alcohol and drug
19 problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12
20 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
21 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
22 that division, from taking disciplinary action against a licensee or from denying a license for
23 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
24 record pertaining to an arrest.

25 “This section shall not be construed to apply to any drug diversion program operated by
26 any agency established under Division 2 (commencing with Section 500) of this code, or any
27 initiative act referred to in that division.”

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1 **COST RECOVERY**

2 12. Section 3753.5, subdivision (a) of the Code states:

3 “In any order issued in resolution of a disciplinary proceeding before the board,
4 the board or the administrative law judge may direct any practitioner or applicant found to have
5 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
6 investigation and prosecution of the case. A certified copy of the actual costs, or a good faith
7 estimate of costs where actual costs are not available, signed by the official custodian of the
8 record or his or her designated representative shall be prima facie evidence of the actual costs of
9 the investigation and prosecution of the case.”

10 13. Section 3753.7 of the Code provides that for purposes of the Respiratory
11 Care Practice Act, costs of prosecution shall include attorney general or other prosecuting
12 attorney fees, expert witness fees, and other administrative, filing, and service fees.

13 14. Section 3753.1 of the Code states:

14 "(a) An administrative disciplinary decision imposing terms of probation may
15 include, among other things, a requirement that the licensee-probationer pay the monetary
16 costs associated with monitoring the probation.”

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Conviction of a Crime)

19 15. Respondent is subject to discipline under section 3750, as defined by
20 sections 3750, subdivisions (d) and (g), 3750.5, subdivision (d), and 3752 of the Code, and
21 California Code of Regulation (CCR), title 16, section 1399.370, subdivisions (a) and (c), in that
22 Respondent was convicted of a crime that substantially relates to the qualifications, functions, or
23 duties of a respiratory care practitioner. The circumstances are as follows:

24 A. On or about June 23, 2005, Officer K.B. responded to the Redlands Smoke
25 Shop after a witness had called the police about a white adult male who staggered and
26 stumbled from the shop and got into a late-model red convertible Volvo. Another police
27 officer, Assistant Chief H. spotted the above vehicle traveling southbound on Lakeside
28 Avenue from Olive Avenue. He followed the Volvo and observed it weave back and

1 forth and travel in the northbound lane, in the center lane, and back into the southbound
2 lane. At the four-way stop at Lakeside Avenue and Palm Avenue, the Volvo traveled
3 completely through the limit line and stopped partially into the intersection. The Volvo
4 finally stopped on Serpentine Avenue where Officer K.B. contacted the driver who was
5 seated in the vehicle. The driver identified himself as Respondent with his California
6 driver's license.

7 B. Officer K.B. noted that Respondent did not appear to have any outward
8 appearance or physical symptomatology of being under the influence of alcoholic
9 substance, nor was there any type of odor emitting from his breath. When asked whether
10 he had taken any medication in the last 24 hours, Respondent stated that he had taken
11 some psychiatric medications, one of which was Seroquel, a mood elevator for his
12 depression. Respondent also stated that he thought there was some warning against
13 driving or operating heavy machinery when taking the medication.

14 C. Office K.B. noted that Respondent's face was red and flushed, his
15 demeanor was confused, his balance was off, and he had difficulty standing straight.
16 Respondent could not satisfactorily complete any of the standardized field sobriety tests.
17 A Preliminary Alcohol Screening (PAS) device test was negative for alcohol.

18 D. Respondent was arrested for violating California Vehicle Code (CVC)
19 section 23152(a) and transported to the Redlands Jail where he was booked. Respondent
20 submitted to blood screen test which detected the presence of Amphetamines¹ and
21 Benzodiazepines².

22 E. On or about January 20, 2006, Respondent was convicted on his own
23 guilty plea of violating CVC 23152(a) [driving under the influence of alcoholic beverage
24 or drug] and was placed on probation.

25
26 1. Amphetamines are potent psychomotor stimulants

27 2. Benzodiazepines are a class of psychoactive drugs considered minor tranquilizers with
28 varying hypnotic, sedative, anxiolytic, anticonvulsant, muscle relaxant and amnesic properties,
 which are mediated by slowing down the central nervous system.

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1 D. Officer S.S. who was called to assist with the traffic collision, made
2 contact with Respondent, the driver of the BMW. Respondent was pointed out to Officer
3 S.S. by Officer W. who was the first officer on the scene. Officer W. had observed
4 Respondent exit the BMW and walk around the passenger side of the vehicle. Officer
5 W. asked Respondent to sit on the curb while maintaining continuous visual contact
6 with Respondent until Officer S.S. arrived at the scene of the accident.

7 E. When Officer S.S. asked Respondent whether he had been drinking
8 alcohol, Respondent replied that had not drank alcohol since 1989. Officer S.S. noted
9 that Respondent's eyes were twitching back and forth, that he lacked smooth pursuit
10 following a pen, and he had vertical and horizontal gaze nystagmus and maximum
11 deviance. In addition, Respondent's pupils were constricted and glassy. Respondent
12 could not satisfactorily complete any of the standardized field sobriety tests. A
13 Preliminary Alcohol Screening (PAS) device test was negative for alcohol.

14 F. Officer S.S. also noted that Respondent seemed confused. When
15 Respondent was asked what the date was, he stated it was January 4, 2008. Officer S.S.
16 checked on Respondent's driver's license, and he was informed that Respondent was
17 under probation for driving under the influence of a controlled substance.

18 G. While Officer S.S. was in the process of obtaining the registration and
19 insurance information on the BMW, he found a black leather bag on the floor on the
20 passenger's side of Respondent's vehicle. Inside the bag was a Zip-lock baggie with a
21 white crystal substance. From his training and experience, Officer S.S. believed this
22 substance to be Methamphetamine. In addition, while Officer S.S. was examining the
23 contents of the black bag, a black plastic bag fell out of the inside cover of the bag. It
24 contained a glass pipe the type used for smoking Methamphetamine. He also found 3
25 more glass pipes, 2 were broken and one of the broken pipes had a white powdery
26 substance in it.

27 H. Officer S.S. further noticed a small glass bottle with a red cap on the floor
28 board of the passenger side of the BMW. Inside the bottle he could see a white powdery

1 substance. Again, based on his training and experience, he believed this to be
2 Methamphetamine. Photos were taken of the items that were found. Officer S.S. placed
3 Respondent under arrest for violating CVC 23152(a) [driving under the influence of a
4 controlled substance] and causing injury, and transported him to the Redlands Police
5 Department.

6 I. Officer S.S. tested the white crystal substance in the Zip-lock baggie and it
7 tested positive for Methamphetamine. The Zip-lock baggie with the white crystal
8 substance weighed 9.5 grams and the glass bottle with the white powder weighed 11
9 grams. The substance in the glass bottle was not tested. While another officer was
10 inventorying the black leather bag, she looked inside a rear zipper and found another
11 plastic baggie that was torn and not sealed, and contained white crystals. Officer S.S.
12 tested the crystal and it also tested positive for Methamphetamine.

13 J. Respondent submitted to blood screen test, and while the blood was being
14 drawn, Respondent told Officer S.S. that he had been arrested for the same thing before
15 and that he has a drug problem. The blood screen test detected the presence of
16 Amphetamines.

17 K. Respondent was charged for violating CVC 23153(a) [driving under the
18 influence of a controlled substance causing injury to another] and Health and Safety Code
19 section 11377 [possession of controlled substance]. Respondent was later released on
20 bail. His court hearing is scheduled for April, 2008.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 (Possession of a Controlled Substance)

23 18. Respondent is further subject to disciplinary action under section 3750, as
24 defined by section 3750.5, subdivision (a), of the Code, and CCR, title 16, section 1399.370,
25 subdivision (a), in that Respondent was in possession of a controlled substance, to wit:
26 methamphetamine, as more particularly described in paragraph 17, above, which is incorporated
27 by reference as if fully set forth herein.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking or suspending Respiratory Care Practitioner License Number
5 1915 heretofore issued to Thomas Milton Bell, R.C.P.;

6 2. Ordering Thomas Milton Bell, R.C.P. to pay the Respiratory Care Board
7 the costs of the investigation and enforcement of this case, and if placed on probation, the costs
8 of probation monitoring;

9 3. Taking such other and further action as deemed necessary and proper.

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11
12 DATED: March 26, 2008

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15 Original signed by Liane Zimmerman for:
16 STEPHANIE NUNEZ
17 Executive Officer
18 Respiratory Care Board of California
19 Department of Consumer Affairs
20 State of California
21 Complainant

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